# Comment on Cases

BILLS AND NOTES: WHETHER A PAYEE IS A HOLDER IN DUE COURSE—Whether a payee of a negotiable instrument may be considered a holder in due course under the provisions of the Uniform Negotiable Instrument Law so far has not been determined by the Supreme Court of California or the District Court of Appeal. This question is of particular importance to banks and other institutions engaged in the lending of money. Commercial necessity frequently demands the employment of a third person in securing the signatures of the parties liable on a note. In promissory notes the usual custom is for the payee-bank to hold the note until the instrument is discharged. Occasionally, the third party procures the signatures of the makers by fraudulent representations, or by device, or by some slight of hand dexterity. When the third party secures the written name by substituting papers, and the alleged makers have not been guilty of any negligence in the transaction, the promissory note in that instance may be classed as a forged instrument. It will be void to all holders regardless of the multiplicity of negotiation.[1] When the crooked third party is the agent of the payee, the payee cannot recover.[2] The loss will fall upon the party employing the agent,[3] provided, of course, it is determined that the third party has the status of an agent.

Assume that the third person is neither the agent of the makers nor of the payee, that the signatures are procured by fraudulent statements involving no shuffling of the papers, and that the payee receives the note innocent of any wrongdoing. Confine the discussion to the one question as to whether a payee may be considered a holder in due course. Prior to the adoption of the Negotiable Instruments Law, California had decided that a payee may be a holder in due course,[4] following the usual trend of common law decisions.[5] The general purpose of the framers of the

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[1] Cases under U. N. I. L.: One, who without negligence, signs a note believing it to be something else, has a defense against everybody. First Natl. Bank of Shenandoah v. Hall (1915) 169 Iowa 218, 151 N. W. 120; Bothel v. Miller (1910) 87 Neb. 835, 128 N. W. 628. What amounts to negligence must be determined from the facts of each case. See Wisconsin Amendment U. N. I. L., § 1676, et seq. covering trickery situation; Minnesota Act (6015) U. N. I. A., Stevens v. Pearson (1917) 138 Minn. 72, 163 N. W. 769, Common Law Cases; Gibbs v. Linabury (1871) 22 Mich. 479, 482; Note 11 Am. St. Rep. 319.

[2] Brady v. Cobbs (1919) (Texas Civil App.) 211 S. W. 802.

[3] Schultz v. McLean (1892) 93 Cal. 329, 357, 28 Pac. 1053; Tischauser v. Prentice (1916) 30 Cal. App. 699, 702, 159 Pac. 226. A deliberate forgery would take the agent out of the principal's employment. Walsh v. Hunt (1898) 120 Cal. 46, 50, 52 Pac. 115, 39 L. R. A. 697. Questions of agency, estoppel, negligence, will undoubtedly be injected into the arguments of counsel.

[4] Tischauser v. Prentice, supra, n. 3.

[5] Armstrong v. American Exchange Bank (1890) 133 U. S. 433, 453; Hartington National Bank v. Breslin (1910) 128 N. W. 659, 31 L. R. A.

Negotiable Instruments Law was to codify rather than to change the previous common law.[6] But some changes were made. For the sake of attaining uniformity, a jurisdiction should be guided on undecided points by decisions rendered in other states under the enactment in preference to their own common law holdings. The first judicial utterance on this particular point under the English Bill of Exchange Act, was to the effect that a payee could not be a holder in due course.[7] The English situation was subsequently set aright by a very thorough and painstaking opinion,[8] the conclusion being that a payee may be a holder in due course.

To determine the proper answer to this disputed question involves a perusal of several sections of our own Act.[9] The term "holder" is defined by section 191, Uniform Negotiable Instruments Law, 3266 California Civil Code, "to be the payee or endorsee of a bill or note who is in possession of it." There is no difficulty in calling the payee the holder. The Act raises the point as to whether an instrument may be said to be negotiated to a payee. Negotiation is defined by section 30 Uniform Negotiable Instruments Law, California Civil Code, section 3111, whereby it is provided "that an instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof." This sentence is followed by "if payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery." The question is whether the last sentence of section 30, Uniform Negotiable Instruments Law, California Civil Code, section 3111, was intended to include all the ways in which an instrument might be negotiated in order to restrict the comprehensive terms of the preceding sentence or was only meant to describe the method by which the person who first becomes holder may pass title.[10] This question of negotiability is interwoven with and becomes the starting point in determining the question whether a payee may be regarded as a holder in due course. The Supreme Court of Iowa, following the

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(N. S.) 130; Collection of Cases, Brannan's Negotiable Instruments Law (3rd ed.) p. 51.

[6] Crawford's Ann. N. I. L., Preface; McKeehan's Review of Ames-Brewster Controversy, See Brannan (3rd ed.) p. 475.

[7] Obiter, Lewis v. Clay (1897) 67 L. J. Q. B. (N. S.), 224, 77 L. J. (N. S.) 653, see Note 15 A. L. R. 437. Section 29 corresponds to § 52 U. N. I. L., or California Civil Code § 3133.

[8] Lloyd's Bank v. Cooke (1907) 1 K. B. 794. This case should not be confused with Smith v. Prosser (1907) 2 K. B. 735, 743, where the plaintiff payee is said to be bona fide although payee knew notes had been signed in blank. See also Glenie v. Bruce Smith (1908) 1 K. B. 263, 268.

[9] U. N. I. L., §§ 14, 30, 52, 191, California Civil Code, §§ 3095, 3111, 3133, 3266. Confirm Brannon (3rd ed.) Negotiable Instrument Law, pp. 49, 56, 59, 103, 128, 163, 164, 174.

[10] See Liberty Trust Co. v. Tilton (1914) 217 Mass. 462, 465, 105 N. E. 605 L. R. A. 1915B 144, 147, 15 A. L. R. 438.

overruled dicta[11] of the first English case,[12] decided that a payee is not a holder in due course. Though this conclusion is disproved by recognized writers on the subject,[13] it has permeated itself into a considerable group of corroborative authorities.[14] The Massachusetts Supreme Court in a careful decision[15] reached the opposite view deciding that a payee is a holder in due course, and this decision[16] expresses the rule in many other jurisdictions.[17] It is followed in case of *The Bank of Commerce v. Randell.*[18] But South Dakota, citing additional cases in favor of the Iowa view, distinctly refused to follow the Nebraska decision.[19] It is submitted that the principal case represents the better view because it is more in accord with the law merchant and enables an innocent payee to assert the same rights that a single negotiation could give to a subsequent holder. If it is decided contra, a tendency is created for the bank to sell to some one else which in the ordinary business transaction in regard to promissory notes at least, is not the anticipation of the bank's client.

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CONSTITUTIONAL LAW: VETERANS WELFARE LEGISLATION IN CALIFORNIA—Recognizing that under the Constitution of California a law providing for a cash bonus to veterans of the Great War would be invalid,[1] the legislature passed a series of acts which, taken together, were designed to afford a scheme by which the public welfare might be served through the giving of certain

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[11] Vander Ploeg v. Van Zuuk (1907) 135 Iowa 350, 112 N. W. 807, 13 L. R. A. (N. S.) 490, 124 Am. St. Rep. 275. A conclusion seemingly firmly established in Iowa. Devoy & Kuhn Coal Co. v. Hutting (1916) 174 Iowa 357, 156 N. W. 413.

[12] Supra, n. 7.

[13] Henning, Uniform Negotiable Instruments Act, 59 University of Pennsylvania Law Review, 481, 508.

[14] Long v. Shafer (1914) 185 Mo. App. 641, 171 S. W. 690; Southern National Life Co. v. People's Bank (1917) 178 Ky. 80, 198 S. W. 543; Bowles v. Frazer (1910) 59 Wash, 336, 109 Pac. 812, 31 L. R. A. (N. S.) 613. See note 15 A. L. R. 437.

[15] Liberty Trust Co. v. Tilton (1914) 217 Mass. 462, 465, 105 N. E. 605.

[16] This view is favored by recognized scholars on the subject; Brannon (3rd ed.) Negotiable Instruments Law, p. 58; University of Pennsylvania Law Review, 471, 480.

[17] Colonial Furn. Co. v. First Natl. Bank, 227 Mass. 12, 116 N. E. 731. Redfield v. Wells (1918) 31 Idaho 417, 173 Pac. 640; Johnson v. Knipe (1918) 260 Penn. 504, 103 Atl. 957, L. R. A. 1918E 839; Brown v. Brown (1915) 91 Misc. Rep. 220, 154 N. Y. Supp. 1098; First Natl. Bank v. Gridley (1906) 112 App. Div. 398, 98 N. Y. Supp. 445. Ex parte Goldberg v. Lewis (1914) 191 Ala. 356, 69 So. 839, L. R. A. 1915F 1159. Bank of Commerce and Savings v. Randell (1921) 186 N. W. 70 (Neb.); See also Helper State Bank v. Jackson (1916) (Utah) 160 Pac. 287 (payee bank recovers being called a holder for value).

[18] (1921) 186 N. W. 70 (Neb.).

[19] Britton Milling Co. v. Williams (1922) 187 N. W. 159, (South Dakota) 160.

[1] See 10 California Law Review, 75, et seq., particularly at pp. 77, n. 22 and 79, n. 36.